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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

David C. Maki,

Plaintiff,

vs.

NSII, LLC, a Nevada Limited Liability Company, as the Managing General Partner of Northern Sky Partners, II, L.P.; Allan P. Harris, Individually, as Managing Member of NSII, LLC, and as Co-Manager of Northern Sky Partners, II, L.P.; John W. Kercheval, III, Individually, as Managing Member of NSII, LLC, and as Co-Manager of Northern Sky Partners, II, L.P.; Sundin & Fish, PLC, an Arizona Professional Limited Liability Company; and Paul B. Sundin, Individually and as Manager of Sundin & Fish, PLC,

Defendants.

CASE NO. 2:15-cv-02625-SPB

**DEFENDANTS' MOTION IN LIMINE
TO PRECLUDE
OTHER PARTNERSHIP
AGREEMENTS**

**(Assigned to the
Honorable Susan R. Bolton)**

Defendants NSII, LLC, John Kercheval and Allan P. Harris ("Defendants"), respectfully move the Court for an order precluding any reference to or use of other

1 partnership agreements produced during the litigation because the other agreements are not
2 relevant and are unduly prejudicial and will cause confusion of the jury.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION AND FACTUAL BACKGROUND**

5 During the course of discovery, Defendants produced other partnership agreements
6 for Northern Skies Partnership II that were executed by other limited partners. Further,
7 Plaintiff obtained earlier versions of partnership agreements for Northern Skies. It is
8 unclear what Plaintiff intends to use these agreements for at trial, but they are inadmissible
9 because they are not relevant and are unduly prejudicial and will confuse the jury during the
10 trial.

11 **II. THE OTHER PARTNERSHIP AGREEMENTS ARE INADMISSIBLE** 12 **UNDER RULES 401 AND 403.**

13 Earlier versions of the partnership agreements for Northern Skies have nothing to do
14 with Plaintiff's claims and will cause confusion with the jury, waste time at trial and are
15 unduly prejudicial.

16 Only evidence that is relevant is admissible. Fed. R. Evid. 401. Evidence is relevant
17 if it tends "to make the existence of any fact that is of consequence to the determination of
18 the action" more or less probable. Fed. R. Evid. 402. Here, the earlier partnership
19 agreements are irrelevant. Plaintiff never saw the agreements prior to investing in Northern
20 Skies, and only obtained the agreements during the course of discovery. Plaintiff has
21 testified that he reviewed the Limited Partnership documents that he executed as part of the
22 investment, and had sufficient time to consult with anyone he deemed necessary. Plaintiff
23 has not identified anything about the earlier partnership agreements that would constitute
24 anything that he believes should have been disclosed by Defendants. Even so, the Limited
25 Partnership Agreement that Plaintiff executed has an integration clause that would make
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1 reference to some earlier versions absolutely irrelevant for purposes of trying to “undo” his
2 investment decision.

3 Moreover, the proffered evidence violates Rule 403, Fed. R. Evid. “The court may
4 exclude relevant evidence if its probative value is substantially outweighed by a danger of
5 one or more of the following: unfair prejudice, confusing the issues, misleading the jury,
6 undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed. R.
7 Evid.403. Even if the prior agreements had some minimally probative value, the prior
8 agreements are highly prejudicial and likely to confuse the jury. Plaintiff may point to the
9 agreements as some basis for how he should have gotten a “better deal” on his investment
10 when he already had the Limited Partnership Agreement and ultimately executed that
11 version of the Agreement. Further, Defendants will be required to spend additional time at
12 trial clarifying the nuanced differences between the agreements and why certain things were
13 changed between each version of the agreements over time. This will result in possible
14 confusion by the jury and ultimately waste time on collateral, unrelated issues. Given the
15 prejudicial nature of the allegations and the potential to mislead the jury and confuse the
16 issues at trial, such substantially outweighs any minimal relevance of such evidence and is
17 inadmissible under Rule 403.
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19 **III. CONCLUSION**

20 For the foregoing reasons, the prior versions of the partnership agreements are
21 inadmissible and Defendants respectfully request that the Court preclude Plaintiff from
22 introducing evidence of or referencing the prior agreements at trial.
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1 DATED this 6^h day of December, 2017.

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3 **DAVIS MILES MCGUIRE GARDNER, PLLC**

4 By: /s/ David W. Williams

5 David W. Williams

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8 *Attorneys for Defendants Northern Sky*
9 *Partners, II, LP, NSII, LLC, Allan P. Harris*
10 *and John W. Kercheval III*

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on the 6th day of December, 2017, I electronically transmitted the
13 foregoing document to the U.S. District Court Clerk's Office by using the CM/ECF System
14 for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF
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